Supreme Court, U.S.
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No. ———

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

TEAMSTERS BREWERY & SOFT DRINK WORKERS LOCAL UNION 896, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,
Petitioner,

v.

ANHEUSER-BUSCH, INC., ROBERT WARNER, a.ka. BOB WARNER, and DOES 1 through 100, inclusive,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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April 1998

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

36 pp

QUESTION PRESENTED

Was the lower court's finding that state law is completely preempted by the mere existence of a collective bargaining agreement, leaving individual union members without redress for violation of important state constitutional and statutory rights, erroneous?

LIST OF PARTIES

The named parties to the proceedings below and before this Court are:

1. Teamsters Brewery & Soft Drink Workers Local Union 896, International Brotherhood of Teamsters, AFL-CIO;

2. Anheuser-Busch, Inc.; and

3. Robert Warner, a.k.a Bob Warner.

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PETITION FOR WRIT OF CERTIORARI

Teamsters Brewery & Soft Drink Workers Local Union 896, International Brotherhood of Teamsters, AFL-CIO, (hereinafter "Union") respectfully prays for issuance of a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on December 23, 1997.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit (Appendix A, *infra*) is not reported. The court's order denying Union's petition for rehearing and rejecting Union's suggestion for rehearing *en banc* (Appendix B, *infra*) was filed on December 23, 1997. The

order of the United States District Court for the Central District of California (Appendix C, *infra*) was filed on May 24, 1996, and entered on May 28, 1996. It is also not reported.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). An application for an extension of time in which to file this petition for Writ of Certiorari (Docket Number 97-3-00673) was presented to Justice O'Connor, who, on March 12, 1998, extended the time to and including April 10, 1998. This petition is therefore timely filed with this Court pursuant to 28 U.S.C. § 2101(c).

STATUTES INVOLVED

The relevant statutory provisions are:

1. California Constitution, Article 1, § 1.

2. California Penal Code § 236.

3. Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185.

STATEMENT OF THE CASE

Petitioner Union, an affiliate of the International Brotherhood of Teamsters, AFL-CIO, is an unincorporated labor organization within the meaning of California Labor Code § 1117 and the National Labor Relations Act § 2(5), as amended, 29 U.S.C. § 152(5). Union represents approximately 783 employees of Respondent Anheuser-Busch, Inc. (hereinafter "Company") at its production facility located in a suburb of Los Angeles, California.

On behalf of its members employed by Company, Union brought suit against Company and Respondent Robert Warner, a.k.a Bob Warner, Company's personnel manager at its Los Angeles area facility, in the Superior Court for the County of Los Angeles, State of California,

alleging two (2) state law tort claims for false imprisonment and violation of the members' right to privacy.

These causes of action arose from actions taken by Company on August 18, 1996. Late in the day, at the close of the first shift, Company herded approximately 235 day shift workers out of the plant into an outdoor area between the plant and employee parking lot. This area is entirely enclosed by wire mesh fencing. Egress from this area to the Company parking lot, where most employees' vehicles were parked and to public property is through a six foot turnstile governed by magnetized employee identification cards. On this day, these employees were not allowed back into the plant after entering the prison-like caged area. Additionally, the exit turnstile was shut down by Company, so that its employees were confined within this outdoor wire-fenced area adjacent to the plant like so many holocaust victims. Each was required to consent to a search of his or her person and effects before being allowed to leave *via* the turnstile. Each was individually searched as the rest waited.

At the same time, several employees who had parked in the Company parking lot were required, after being personally searched, to consent to a search of their vehicle as a condition of leaving the parking lot. Trained dogs were brought in to canvass the parking lot and identify the possible presence of drugs in vehicles. Any vehicle singled out by a dog was noted and, as soon as an employee approached one of these vehicles, a search was demanded. Employees who did not have vehicles in the lot could leave, but only after they consented to a personal search.

This process continued into the night for over five (5) hours. Employees who had not yet been searched were held, off the time clock,[1] as the searches were completed.

---

[1] Company initially refused to pay its employees for their time spent as prisoners. After a few weeks, following heated objections from Union, they were paid for their time spent against their will.

This lengthy, involuntary confinement behind wire mesh fencing, resulted in the discovery of nothing on anyone's person or in their effects; in one vehicle two (2) large dog biscuits and a large bag of table salt were discovered and in another, a bag of bird seed was retrieved. No drugs were found in either of these vehicles. Three employees in the bargaining unit were terminated; one for refusing to surrender his car to a search; a second, whose vehicle contained a few marijuana seeds and two "butts," was terminated, but subsequently reinstated; and a third, whose vehicle contained what he said was his cousin's marijuana, had his termination upheld. Two others who were not in the Union's bargaining unit were terminated for refusing to allow a search of their vehicles. The only other vehicle in which even a minute quantity of any illegal drug or prohibited substance was found was a vehicle being driven by one of Company's own security guards.

The Company removed this State Court tort action to the United States District Court for the Central District of California. The District Court, the Honorable A. Andrew Hauk presiding, denied the Union's motion to remand. Instead, Judge Hauk held the tort claims preempted under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, and the action properly removed because the preemption defense conferred federal question jurisdiction under 28 U.S.C. §§ 1331, 1441(h) and 29 U.S.C. § 185.

Shortly thereafter, the District Court granted Company's motion for summary judgment on the grounds that each and every claim in the complaint was preempted under Section 301. The Union timely appealed to the United States Court of Appeals for the Ninth Circuit. Following briefing and oral argument, the Court of Appeals issued a one sentence opinion affirming the judgment of the District Court. A timely petition for rehearing

en banc, filed by Union, was denied and this petition followed.

REASONS FOR GRANTING THE PETITION

I. THE STATE LAW CLAIMS ERRONEOUSLY FOUND TO BE PREEMPTED BY THE COURT BELOW INVOLVE IMPORTANT AND INALIENABLE STATE RIGHTS

The State of California invests each of its citizens, through its Constitution and laws, with certain basic rights that may neither be abridged nor compromised. Citizens of this state do not "check" these basic rights at the door of their workplaces. Rather, they carry them everywhere as an inalienable shield against certain fundamental intrusions. The state law claims found preempted in this case are such basic rights.

First, the right to be free from false imprisonment is not preempted. This right, amongst the most essential of all rights granted citizens, has been reaffirmed again and again by the courts of California. Second, the right to privacy, considered so paramount the voters of California have added it to Article 1, § 1 of the State Constitution, cannot be preempted either.

These rights are important and inalienable. They stand apart and separate from either Union's or Company's rights under a collective bargaining agreement. The lower court's finding that their citizens of California cannot have redress for violation of these personal rights in state court, like others, simply because they work pursuant to a collective bargaining agreement, is erroneous and must be overturned.

A. California Law Protects All Of Its Citizens From False Imprisonment

The tort of false imprisonment in California is "the unlawful violation of the personal liberty of another."

California Penal Code Section 236; *Molko v. Holy Spirit Association for the Unification of World Christianity*, 46 Cal. 3d 1092, 1123, 252 Cal. Rptr. 122 (1988) (holding the tort cause of action to be identified to the criminal cause of action). The California Supreme Court in *Molko* defined the tort of false imprisonment as follows:

> [T]he non-consensual, intentional confinement of a person, without lawful privilege, for an appreciable length of time, however short. A person is falsely imprisoned if he is wrongfully deprived of his freedom to leave a particular place by the conduct of another.

Molko, 46 Cal. 3d 1092, 1123 (citations omitted).

The California Supreme Court has explicitly offered this right to all California workers by finding the right beyond the scope of their "compensation bargain." *Fermino v. Fedco, Inc.*, 7 Cal. 4th 701, 706 30 Cal. Rptr 2d 18, 19 (1994).

In *Fermino* the California Supreme Court specifically examined the scope of a false imprisonment claim to determine whether it was preempted by California's Worker Compensation system. This Court rejected an employer's preemption claim on the grounds that false imprisonment by an employer while possibly motivated by "initially legitimate motives," *Id.* at 716, is, by definition, an unreasonable and criminal confinement, beyond the scope of the employment relationship. Using words that ironically mirror the relevant facts here, the court stated "[w]hen an employer forcibly and criminally deprives an employee of her liberty, even as a means to otherwise legitimate ends, it steps outside its 'proper role,' whether it uses assault and battery to enforce that false imprisonment, or employs some other coercive stratagem." *Id.* at 721.

The required confinement can be brief, as little as fifteen minutes; let alone several hours as occurred in this

case. *See Scofield v. Critical Air Medicine, Inc.*, 45 Cal. App. 4th 990, 1001, 52 Cal. Rptr. 2d 915 (1996). The restraint may be effectuated by means of physical force, threat of force or arrest, confinement by physical barriers, or by means of any other form of unreasonable duress, including fraud or deceit. *Scofield*, 45 Cal. App. 4th 990, 1001-1002. The confinement experienced by 235 employee-claimants in this case, who were held for periods of up to five hours behind a six-foot high wire mesh fence, certainly qualifies.

The "personal interest in freedom from restraint of movement" is considered so important the state allows a cause of action to stand even if a plaintiff only suffers nominal damages. *Scofield*, 45 Cal. App. 4th 990, 1008, (*quoting Jackson v. City of San Diego*, 121 Cal. App. 3d 579, 585, 175 Cal. Rptr. 395 (1981)). Recovery may be had for any resulting harm, including loss of time, physical discomfort or inconvenience; any resulting physical illness or injury to health, business interruption, and damage in reputation; as well as punitive damages in appropriate cases. *Scofield*, 45 Cal. App. 4th 990, 1009 (upholding a $120,000 award for false imprisonment).

Many day shift employees here were held late into the night, confined, confused, and unable to meet family and other personal commitments while they waited for Company to release them. The only redress for these and other harms suffered by these California citizens lies in the claims they have attempted to bring in state court. Had they been employed in a non-union setting, they would have already had redress. The State of California has made clear it considers the right to be free from false imprisonment a badge of citizenship belonging to all state residents. The lower court's sanction of this deprivation, simply on account of the selection of a bargaining agent, was unlawfully discriminatory and unsupportable.

B. The California Constitution Guarantees The Privacy Rights Of Its Citizens

Article 1, Section 1 of the California Constitution creates a right of action against private entities, including employers, for the tort of invasion of privacy. *Landon v. Northwest Airlines, Inc.*, 72 F.3d 620, 626 (8th Cir. 1995), *citing Hill v. National Collegiate Athletic Association*, 7 Cal. 4th 1, 20, 26 Cal. Rptr. 2d 834 (1994). *See, also Norman-Bloodsaw v. Lawrence Berkeley Laboratory*, 135 F.3d 1260 (9th Cir. 1998) (analyzing Title VII, ADA, federal and state constitutional claims).

There are three threshold elements to the cause of action: (1) identification of a specific, legally protected privacy interest, *Norman* at 1271, (2) a reasonable expectation of privacy on the plaintiff's part, *id.;* and (3) conduct by a defendant that amounts to a "serious invasion" of the protected privacy interest, *id.* (*quoting Loder v. City of Glendale*, 14 Cal. 4th 846, 59 Cal. Rptr. 2d 696 (1997)). Upon proof of these elements, a state court will then balance "the countervailing interests for the conduct in question against the intrusion on privacy resulting from the conduct." *Norman* at 1271.

Any California citizen, including one who works under the terms of a collective bargaining agreement, is lawfully permitted to assert this right in the absence of a clear and specific waiver. *See e.g., Norman.* In *Norman,* the Ninth Circuit examined whether completion of an extensive questionnaire, pursuant to an employer required medical examination, gave an employer the right to test otherwise permissibly obtained blood and urine samples for such conditions as sickle cell anemia, syphilis, and pregnancy. *Id.* at 1265. The employer argued the employees check-mark, "yes" or "no" answers, to questions regarding the sickle cell trait, sexually transmitted diseases, and menstrual disorders constituted employee consent to the employer tests. *Id.* at 1270-71. The court disagreed, finding that submission to an employment re-

lated medical examination did not put employees on notice they would be further tested for such personal conditions. *Id.* at 1268. Similarly here, working under the terms of a collective bargaining agreement (especially one that is entirely silent on this subject) does not serve as a waiver of all rights to personal privacy.

All California workers are entitled to general damages to compensate for injury to peace of mind and feelings when their personal privacy has been invaded. In addition, "special damages need not be charged or proven, and if the proof discloses a wrongful invasion of the rights of privacy, substantial damages for mental anguish alone may be recovered." *Miller v. National Broadcasting Co.*, 187 Cal. App. 3d 1463, 1485, 232 Cal. Rptr. 668 (1986) (citations omitted). Here, Company inflicted such damages on its employees when, without their waiver, it arbitrarily forced hundreds of them to be searched. These injuries may, and should, be redressed under state laws.

II. FEDERAL LABOR POLICY DOES NOT REQUIRE EMPLOYEES COVERED BY COLLECTIVE BARGAINING AGREEMENTS TO GIVE UP RIGHTS UNDER STATE LAW WHICH ARE INDEPENDENT OF SUCH AGREEMENTS

The elements of each of these causes focus only the facts surrounding the confinement and coerced searches of these California citizens. The collective bargaining agreement is devoid of reference to these subjects thus these causes of action should have been allowed to proceed in the courts of the State of California.

Presumably, the lower court reasoned any transaction between the Company and its employees is *ipso facto* covered by the Company's collective bargaining agreement with the Union, and therefore preempted from adjudication in the State Courts. This broadly punitive holding simply misapprehends applicable law.

Parties come to a collective bargaining table with a backdrop of fundamental employee rights provided by state legislatures to all of their citizens. Neither party may bargain away these fundamental individual rights without at least some express intention to do so. And, some basic rights may not be bargained away under any circumstances. "As with any contract, . . . a court may not enforce a collective bargaining agreement that is contrary to public policy." *W. R. Grace and Co. v. Local Union 759,* 461 U.S. 757, 766 (1983). Parties can, for example, choose if they wish to bargain away overtime premiums, *Livadas v. Bradshaw,* 512 U.S. 107, 131 (1994), but cannot bargain away the right to be free from discrimination on the basis of race, age, sex or disability. *Jimeno v. Mobil Co.,* 66 F.3d 1514 (9th Cir. 1995); *Mitchell v. National Broadcasting Co., Inc.,* 553 F.2d 265 (2nd Cir. 1977).

Even with respect to state statutes regulating employment relationships, this Court has repeatedly rejected the principle that every such statute is *a fortiori* preempted by the existence of a collective bargaining agreement. In *Metropolitan Life Ins. Co. v. Massachusetts,* 471 U.S. 724 (1985), this Court unanimously rejected the argument that Congress "intended to prevent the states from establishing minimum employment standards that the parties would otherwise have been required to negotiate from their federally protected bargaining position." *Id.* at 751.

Noting that Congress never intended to exempt those covered by union contracts and their employers from federal minimum standards, the Court held there was no reason to treat state minimum standards differently:

> Minimum state labor standards affect union and nonunion employees equally, and neither encourage nor discourage the collective-bargaining processes that are the subject of the NLRA. Nor do they have any but the most indirect effect on the right of self-

> organization established in the Act. . . . Rather, they are minimum standards 'independent of the collective bargaining process [that] devolve on [employees] as individual workers, not as members of a collective organization.'

Metropolitan Life, 471 U.S. 724, 755 (quoting *Barrentine v. Arkansas Best Freight System, Inc.*, 450 U.S. 728, 745 (1981)).

This Court revisited the question in *Livadas*. The question there was whether an employee covered by a collective bargaining agreement was excluded from the protections of a California statute requiring employers to pay all wages due immediately upon termination of employment, merely by virtue of employment pursuant to that agreement. This Court observed:

> In an effort to give wide berth to federal labor law and policy, the Commissioner declines to enforce union-represented employees' claims rooted in nonwaivable rights ostensibly secured by state law to all employees. . . . Federal labor law does not require such a heavy handed policy, and indeed, cannot permit it.

Livadas, supra, 512 U.S. 107, 134. Thus, this Court reaffirmed the guiding principle that state rights existing independent of collective bargaining agreements cannot be denied employees solely on the basis of their selection of a bargaining agent.

If unions and employers are not free to contract away fundamental state law rights, what sense does it make for federal courts to do so? If a guiding light behind the preemption principle is consistency and federal supremacy, what interest is served by allowing an employer to escape liability simply due to its employees' exercise of federally protected rights? Did the fundamental nature of each of these state law torts disappear when these employees chose a union? Clearly not.

Employees do not give up their rights to be free from physical or sexual assault when they walk through the plant door. *Jackson v. Kimel*, 992 F.2d 1318 (4th Cir. 1993). Indeed, it is unlawful for a collective bargaining agreement to attempt to extinguish such rights. "Clearly, § 301 does not grant the parties to a collective bargaining agreement the ability to contract for what is illegal under state law." *Allis Chalmers*, 471 U.S. 202, 212 (1985).

Similarly, employees do not give up their rights under state law to be protected from defamation by virtue of working pursuant to a collective bargaining agreement. *Luecke v. Schnucks Markets, Inc.*, 85 F.3d 356 (8th Cir. 1996). State torts suits seeking damages for allegedly defamatory statements, which exceed the scope of what the NLRB has found to be commonplace labor epithets, are not preempted by federal labor policy. *Linn v. United Plant Guard Workers of America*, 383 U.S. 53, 60 (1966).

In *Tellez v. Pacific Gas and Electric Co.*, 817 F.2d 536 (9th Cir. 1987), *cert. denied*, 484 U.S. 908 (1987), the Ninth Circuit did not find preempted an employee's claims for defamation and intentional infliction of emotional distress. The Circuit held that defamation did not draw upon the collective bargaining agreement for sustenance. Reflecting an employer's claim that arbitration of the discipline was the exclusive remedy, the court ruled an arbitrator would have "no authority to decide questions of intent, privilege and injury and no standards by which to judge the defamation claim." *Id.* at 538.

Likewise, the intentional infliction of emotional distress claim was not preempted. That tort, the court found, requires extreme and outrageous behavior, and the collective bargaining agreement neither addressed nor envisioned such behavior. Ruling the grievance procedure unequipped to address such behavior, the court found the

contract did not provide an appropriate remedy. *Id.* at 539. The claim was not preempted.

In reaching its decision, the *Tellez* court distinguished a case relied upon by the lower court here. *See Truex v. Garrett Freightlines, Inc.*, 784 F.2d 1347 (9th Cir. 1985). In *Truex*, the actions complained of, *e.g.* excessive supervision, unjustified warning letters and alteration of work schedules, were in essence "claims that administration of discipline was improper under the standards set by the collective bargaining agreement." *Id.* at 1350. This conduct is exactly the type of employer activity a union and employer traditionally seek to regulate in a collective bargaining agreement. Here, as in *Tellez*, exactly the opposite is true. These claims have nothing to do with, nor are they in any way dependent upon, any analysis of the collective bargaining agreement.

This Court expressed similar views in *Farmer v. United Brotherhood of Carpenters & Joiners,* 430 U.S. 290 (1977), holding that whether the operation of a hiring hall violated federal labor statutes, the outrageous conduct alleged was so far outside the scope of conduct regulated by the NLRA a suit for intentional infliction of emotional distress could not be preempted. And, of importance here, the *Farmer* Court established a two (2) prong analysis for state jurisdiction to withstand a claim of NLRA preemption: "the state tort [must] be either unrelated to employment discrimination or a function of the particularly abusive manner in which the discrimination is accomplished. . . ." *Id.* at 305 (footnote omitted).

In *Keehr v. Consolidated Freightways of Delaware, Inc.*, 825 F.2d 133 (7th Cir. 1987), the court cited *Farmer* as authority for the rule that both intentional infliction of emotional distress *and* invasion of privacy are not preempted by the NLRA. The court held the rationale was the same—where the conduct by employer is carried out in a particularly abusive manner as to be "highly

offensive to a reasonable person," the federal policy of leaving the dispute to be resolved within the grievance/arbitration mechanism does not mandate preemption of the state court tort action. *Keehr* at 137.

Here, the principles are the same. No logical reason compels a different conclusion than was reached in *Farmer* simply because this is a Section 301 preemption claim under a collective bargaining agreement. Indeed, if consistency is one of the goals of the doctrine, this holding cannot be reconciled with *Farmer* or *Keehr*. Not only does this collective bargaining agreement not contain a provision on the subject of employee confinement or searches, it probably could not. In sum, no reasonable person could fail to be offended by the outrageous tactics of Company in confining and searching its own unsuspecting employees. The collective bargaining agreement should provide no shield against such misconduct.

III. BECAUSE THE COURTS OF APPEALS CONTINUE TO APPLY THE PREEMPTION DOCTRINE IN A FRACTURED MANNER, EVEN AFTER THIS COURT'S DECISION IN *LIVADAS v. BRADSHAW*, THIS IS NOW A "FIT OCCASION" TO SPELL OUT THE SCOPE OF THE PREEMPTION DOCTRINE

As this Court noted in *Livadas*, the courts of appeals historically "have not been entirely uniform in their understanding and application of [the various preemption doctrines]." *Livadas, supra*, 512 U.S. 107, 124 n.18. Unfortunately, this continues to be the case even after *Livadas*, with some Circuits applying the various preemption doctrines narrowly, and others continuing to apply them quite broadly, so that the resulting fabric of preemption law appears to have been cut with pinking shears rather than a sharpened pair of scissors.

In the instant case, the Circuit applied Section 301 preemption broadly, holding the mere existence of a collective bargaining agreement, without reference to a single ap-

plicable provision, preempted these union members' state law claims.

Similarly, in *Antol v. Esposto,* 100 F.3d 1111 (3rd Cir. 1996), the Third Circuit, over a vigorous dissent that relied heavily on *Livadas,* crafted a very broad application of the doctrine. In that case, the issue was whether laid-off employees of a bankrupt business could bring actions for wages earned, but never paid, against the majority shareholders of the employer, under the Pennsylvania Wage Payment and Collection Law allowing such suits. Although the dissent argued that the amounts due could be easily calculated merely by taking the daily wage rates of the employees from the Appendix, the panel found the claims under the Pennsylvania Act to be preempted and upheld summary judgment for the owners of the business.

The Seventh Circuit, as well, has recently broadened their interpretation of the preemption doctrine. In *Atchley v. Heritage Cable Vision Association,* 101 F.3d 495 (7th Cir. 1996), the court held a state wage law preempted simply because the trigger date for penalties would involve looking at a provision of a collective bargaining agreement to decide when the payments were due. This holding, based on facts strikingly similar to those in *Livadas,* makes clear how divergent the interpretations have become.

In sharp contrast, the Fifth Circuit employs a much narrower standard. In *Branson v. Greyhound Lines, Inc.,* 126 F.3d 747 (5th Cir. 1997), *cert. denied,* —— S. Ct. ——, 1998 WL 54130 (1998), the Circuit held an employee's breach of contract claim against the employer not preempted. The agreement in question was a 1990 offer, by the employer, of a super seniority award (called EBS) to all employees who were willing to return to work during a strike. When the strike ended, a new collective bargaining agreement was reached that did *not* provide recognition of EBS. Upon examining the new collective bargaining agreement, the court stated

> [t]he seniority provision of the 1993 CBA, however, contains no precise definition of EBS, nor does it clarify whether EBS contemplated the extension of seniority credit only for non-Greyhound driving experience. Even if it did, what [the employer] and the Union say in 1993 (in the CBA) about what [the Employer] and [the Plaintiff] agreed to in 1990 cannot alter the analysis of the 1990 agreement itself.

Id. at 754. This detailed analysis not only represents a divergent approach from that of other Circuits, but by yielding a finding of no preemption, the case becomes rather extraordinary.

The Second Circuit has also taken a more restricted view of the preemption doctrine. In *Foy v. Pratt & Whitney Group*, 127 F.3d 229 (2nd Cir 1997), the Circuit held union members' state negligent misrepresentation claims were not preempted by Section 301. The causes of action arose out of a manager's alleged representations to employees whose work had been transferred to another plant that, if they were to forgo a limited transfer opportunity, they would be afforded another such opportunity before they were actually laid off. Examining the elements of the claim, and acknowledging that at least one of them —whether the employee's reliance on the manager's representation was reasonable—might implicate the transfer and layoff provisions of the collective bargaining agreement, the court nonetheless concluded

> [t]hese plaintiffs' state law misrepresentation claims depend upon the employer's behavior, motivation, and statements, as well as plaintiffs' conduct, their understanding of the alleged offer made to them, and their reliance on it. [cite ommitted] Reference to the CBA may be needed, but state law will play no part in determining what the parties agreed to in the CBA or whether the CBA has been breached.

Id. at 235.

The Fifth and Second Circuit interpretations of the scope of preemption are certainly more in line with this Court's reasoning in *Livadas* and are distinct from that of the other Circuits. In light of this division among the Circuits, the Union respectfully urges this Court to clarify the scope of a doctrine impacting the basic rights of thousands of workers across this country each year.

IV. THE COURTS BELOW APPLIED THE WRONG STANDARD TO DETERMINE WHETHER THESE STATE LAW CLAIMS ARE PREEMPTED

The lower courts in this case misread the narrowing focus of at least one branch of the preemption doctrine in the aftermath of *Allis Chalmers, Metropolitan Life, Lingle* and *Livadas*. The lower court's holding, that state law claims "require interpretation of the [collective-bargaining] agreement for their resolution" implies that federal courts should conduct an investigation as to the degree of interpretation of the collective bargaining agreement necessary. Under this theory, if the inquiry requires even the slightest interpretation, the state law claim is preempted, regardless of whether the state law public right exists completely independent of the contract language.

This construction is at odds with *Allis Chalmers*, which held state law claims, whatever their label, which seek in substance to remedy a denial of contract rights under the collective-bargaining agreement are preempted. As this Court stated in *Livadas*, "it is the legal character of the claim, as 'independent' of rights under the collective-bargaining agreement, . . . that decides whether a state cause of action may go forward." *Livadas, supra*, 512 U.S. 107, 123-24 (cites omitted).

The correct standard for determining whether a state law claim exists independently of the collective bargaining agreement is whether resolution of the state claim is so enmeshed within the collective-bargaining agreement as to

make extrication of the two impossible As this Court stated,

> [o]ur analysis must focus, then, on whether the Wisconsin tort action for breach of the duty of good faith as applied here confers nonnegotiable state law rights on employers or employees independent of any right established by contract, or, instead, whether evaluation of the tort claim is inextricably intertwined with consideration of the terms of the labor contract. If the state tort law purports to define the meaning of the contract relationship, that law is preempted.

Allis Chalmers, 471 U.S. 202, 213.

The fact that any preemption determination, where an employment contract exists, invariably involves a look at the contract has led to this confused state of affairs. The result has been discriminatory deprivation for employees of a myriad of substantive state rights which in no way derive from their private contractual agreements, whether arrived at through collective bargaining or otherwise—e.g., rights against wrongful discharge,[2] retaliatory discharge,[3] and defamation,[4] as well as wage laws, such as those overturned by this Court in *Livadas*.

In the instant case, the indisputable absence of any provision in the collective bargaining agreement even purporting to address false imprisonment or employee searches, underscores the conclusion that these causes of action are outside the scope of the collective bargaining agreement and are neither derived from nor intertwined with any provision of the agreement. If, indeed, a judicial "look see" is required to confirm that conclusion, so be it. A "look see" does not mean preemption is the inevitable and automatic result.

---

[2] *Barnes v. Stone Container Corp.*, 942 F.2d 689 (9th Cir. 1991).

[3] *Magerer v. Sexton*, 912 F.2d 525 (1st Cir. 1990).

[4] *Johnson v. Anheuser Busch, Inc.*, 876 F.2d 620 (8th Cir. 1989).

The Company had no legal or contractual right to imprison or search its employees in the circumstances presented herein. The lower court's glib proclamation, extinguishing their fundamental state law rights, should not stand.

CONCLUSION

For the reasons argued above, this petition for a Writ of Certiorari to the Ninth Circuit should be granted.

Respectfully submitted,

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April 1998

APPENDIX A

[Filed Nov. 3, 1997]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 96-55895
D.C. No. CV-95-07052-AWT

TEAMSTERS BREWERY & SOFT DRINK WORKERS LOCAL UNION 896, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,
Plaintiff-Appellant,

vs.

ANHEUSER-BUSCH, INC.; ROBERT WARNER, a/k/a BOB WARNER,
Defendants-Appellees.

Appeal from the United States District Court
for the Central district of California
A. Andrew Hauk, District Judge, Presiding

Argued and Submitted October 6, 1997
Pasadena, California

ORDER *

Before: PREGERSON, D.W. NELSON, and HAWKINS, Circuit Judges.

We AFFIRM the District Court's grant of summary judgment to appellees.

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R.36-3.

APPENDIX B

[Filed Dec. 23, 1997]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 96-55895
D.C. No. CV-95-07052-AWT

TEAMSTERS BREWERY & SOFT DRINK WORKERS LOCAL UNION 896, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,
Plaintiff-Appellant,

vs.

ANHEUSER-BUSCH, INC.; ROBERT WARNER, a/k/a BOB WARNER,
Defendants-Appellees.

ORDER

Before: PREGERSON, D.W. NELSON, and HAWKINS, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehearing the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX C

[Filed May 24, 1996]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 95 7052 AAH (Mcx)

TEAMSTERS BREWERY & SOFT DRINK WORKERS LOCAL 896, UNION,
Plaintiff,

v.

ANHEUSER-BUSCH, INCORPORATED, *et al.*
Defendants.

JUDGMENT

The Court, having granted the motion for summary judgment brought by Defendants Anheuser-Busch, Incorporated and Robert Warner (collectively "Defendants"), for the reasons set forth in its Decision, Findings of Fact, Conclusions of Law, and Order Granting Summary Judgment For Defendants, entered May 13, 1996, HEREBY ORDERS, ADJUDGES AND DECREES:

Judgment is entered in favor of Defendants and against Plaintiff. Defendants shall recover their costs of suit, in the amount of $_____.

DATED: May 24, 1996

/s/ A. Andrew Hauk
A. ANDREW HAUK
United States District Judge

SUBMITTED BY:

WILLIAM L. COLE
LAWRENCE A. MICHAELS
ADAM LEVIN
MITCHELL, SILBERBERG & KNUPP

By /s/ Lawrence A. Michaels
LAWRENCE A. MICHAELS

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& ALLIED WORKERS LOCAL NO. 495

APPENDIX D

[Filed May 13, 1996]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 95-7052 AAH(Mcx)

TEAMSTERS BREWERY & SOFT DRINK WORKERS OF LOCAL UNION 896, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,
Plaintiffs,

v.

ANHEUSER-BUSCH, INC., ROBERT WARNER, aka BOB WARNER, and DOES 1-100, inclusive.
Defendants.

DECISION, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING SUMMARY JUDGMENT FOR DEFENDANTS

This action having been submitted to the Court, the Honorable A. Andrew Hauk presiding, upon the motion of Defendants, ANHEUSER-BUSCH and ROBERT WARNER, for summary judgment pursuant to Fed.R. Civ.P. 56; and the Court having considered the documents submitted in support and in opposition to the motion now makes its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. There is, and at all times has been, a collective bargaining agreement in effect between Defendant Anheuser-Busch and Plaintiff Teamsters Brewery & Soft Drink Workers Local 896 (the "Union").

2. On August 19, 1995, Anheuser-Busch conducted a search of the Company's "employee parking lots" at its Los Angeles brewery, looking for illegal drugs. The purpose of the search was to ascertain whether employees had brought drugs on to the premises in their vehicles or on their person.

3. To conduct this search, Anheuser-Busch hired a security company to walk through the employee parking lots with dogs trained to detect the smell of drugs in cars parked in the lot.

4. Where, based on the scent detected by these trained dogs, Anheuser-Busch suspected that an employee had brought drugs on to the Company's premises, the employee was asked to consent to a search of his or her person and his or her vehicle or they would be terminated immediately.

5. Union employees at the Los Angeles Brewery clock in and out of the brewery by inserting an electronic badge to pass through a "turnstile" between the brewery plant and the employee parking lot.

6. There is no physical obstruction which would prevent a person from leaving the brewery premises, or entering the employee parking lot, without passing through these turnstiles, but an employee is subject to discharge if he or she does leave in a way as to avoid these turnstiles. Guards are stationed in such a manner as to inform any employee attempting to avoid these turnstiles that they must go through the turnstiles or face termination.

7. The Union's claim of "false imprisonment" is based on the fact that employees were threatened with termination if they left the brewery premises without consenting to a vehicle search, or without clocking out by passing through the turnstiles.

8. While the above-referenced collective bargaining agreement does not have an express "management rights"

provision, the Union does recognize Anheuser-Busch's implicit right to adopt reasonable work rules which do not conflict with any provisions of the collective bargaining agreement.

9. Under work rules adopted by Anheuser-Busch, any Union employee who leaves plant premises during working hours is subject to discipline up to and including discharge, for "job abandonment."

10. Anheuser-Busch has a history of conducting certain types of work place searches—searches which the Union has acknowledged are permissible under the collective bargaining agreement.

11. Under the above-referenced collective bargaining agreement, any dispute related to interpreting or applying the collective bargaining agreement is subject to final and binding arbitration.

12. The Union did not breach its duty of fair representation to those employees on whose behalf the Union has brought this action.

13. The conduct of Robert Warner in connection with this drug search was simply to carry out a Company decision, over which Warner himself had no control and no authority.

CONCLUSIONS OF LAW

1. The claims of Plaintiff Union are preempted under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. The Union's claims are inextricably intertwined with the collective bargaining agreement between the Union and Anheuser-Busch, and require interpretation of that agreement for their resolution. *Stikes v. Chevron USA, Inc.*, 914 F.2d 1265 (9th Cir. 1990), *cert. denied*, 500 U.S. 917; *Schlacter-Jones v. General Telephone*, 936 F.2d 425, 441 (9th Cir. 1991); *Laws v. Calmat*, 852 F.2d 430, 433 (9th Cir. 1988).

2. The Union's claim for alleged violation of its members' right to privacy is preempted. *Stikes v. Chevron USA, Inc.*, 914 F.2d 1265 (9th Cir. 1990); *Schlacter-Jones v. General Telephone*, 936 F.2d 425, 441 (9th Cir. 1991); *Laws v. Calmat*, 852 F.2d 430, 433 (9th Cir. 1988).

3. The Union's claim for alleged false imprisonment of its members is also preempted. *Romero v. Hilton Hotels Corp.*, 137 LRRM 2647 (D.Ha. 1991); *Blanchard v. Simpson Plainwell Paper Co.*, 1995 U.S.Dist. LEXIS 5830 (W.D.Mich. 1995).

4. Accordingly, this action was properly removed to this Court, and this Court has jurisdiction over this action, pursuant to this Court's federal question jurisdiction, 28 U.S.C. §§ 1331, 1441(b), 29 U.S.C. § 185, in that the Union's claims are governed by Section 301 of the Labor Management Relations Act. Any attempt by the Union to plead a claim under state law must fail because the state law is preempted.

5. Because the Union's claims are preempted, Defendants are entitled to summary judgment on those claims. *Stikes v. Chevron USA, Inc.*, 914 F.2d 1265 (9th Cir. 1990); *Schlacter-Jones v. General Telephone*, 936 F.2d 435, 442 (9th Cir. 1991); *Utility Workers of America, Local No. 246 v. Southern California Edison Company*, 852 F.2d 1083 (9th Cir. 1983), *cert. denied*, 489 U.S. 1078 (1989).

6. Since state law is completely preempted, the only possible claim which the Union could assert is under the applicable collective bargaining agreement, pursuant to Section 301. Such a claim would necessarily fail, however, because as a matter of law, the exclusive remedy for any breach of the collective bargaining agreement is through final and binding arbitration. *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581, 80 S.Ct. 1347, 1352 4 L.Ed.2d 1409 (1960); *Utility*

Workers of America, Local No. 246 v. Southern California Edison Company, 852 F.2d 1083 (9th Cir. 1983), *cert. denied*, 489 U.S. 1078 (1989).

7. There is one exception to the rule that arbitration is the exclusive remedy for claims arising under the collective bargaining agreement which provides for arbitration. That exception arises if the union breaches its duty of fair representation. *Vaca v. Stipes*, 386 U.S. 171, 182, 87 S.Ct. 903, 912, 17 L.Ed.2d 842, 853 (1967); *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562-63, 567-72, 96 S.Ct. 1048, 47 L.Ed.2d 231 (1976). In this action, however, it is undisputed that the Union did not breach its duty of fair representation. Accordingly, Defendants are entitled to summary judgment based on the rule that arbitration is the exclusive remedy for the Union's claims. *Stevens v. Moore Business Forms, Inc.*, 18 F.3d 1443, 1444, 1447 (9th Cir. 1994).

8. The Union's claims against Defendant Robert Warner are preempted just as are the Union' claims against Defendant Anheuser-Busch. *Truex v. Garrett Freightlines, Inc.*, 784 F.2d 1347 (9th Cir. 1985). Warner is entitled to summary judgment for the same reasons Defendant Anheuser-Busch is entitled to summary judgment.

ORDER

Based on the aforesaid Findings of Fact and Conclusions of Law,

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date 5/13/96

/s/ A. Andrew Hauk
A. ANDREW HAUK
United States District Judge

Supreme Court, U.S.
FILED
MAY 8 1998
CLERK

No. 97-1661

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

TEAMSTERS BREWERY & SOFT DRINK WORKERS LOCAL UNION 896, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,
Petitioner,

vs.

ANHEUSER-BUSCH, INC., ROBERT WARNER, a.k.a., BOB WARNER, and Does 1 Through 100, Inclusive,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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29 pp

QUESTION PRESENTED

Did the lower court properly uphold summary judgment for Respondents, based on the finding that Respondent Anheuser-Busch's right to conduct work place searches was governed by the collective bargaining agreement between Anheuser-Busch and Petitioner Teamsters Union, and therefore state law claims challenging Anheuser-Busch's right to conduct such a work place search were preempted by Section 301 of the Labor Management Relations Act?

PARTIES TO THE PROCEEDING

The petition accurately lists the parties to the proceeding.

Respondent Anheuser-Busch, Inc.'s parent company is Anheuser-Busch Companies, Inc. The only non-wholly owned subsidiary of respondent Anheuser-Busch, Inc. is Somerset Distributors, LLC.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Anheuser-Busch, Inc. ("Anheuser-Busch") and Robert Warner (collectively "Respondents") respectfully submit this Opposition to the instant Petition for Writ of Certiorari.

OPINIONS BELOW

The Ninth Circuit's November 3, 1997 order affirming the summary judgment for Respondents, which was not reported, is attached to the Petition as Appendix A. The Ninth Circuit's December 23, 1997 order denying the petition for rehearing and suggestion for rehearing *en banc* is attached as Appendix B to the Petition.

The May 24, 1996 judgment for Respondents and the District Court's May 13, 1996 "Decision, Findings of Fact, Conclusions of Law and Order Granting Summary Judgment for Defendants" (*i.e.*, Respondents) are attached to the Petition as Appendix C and Appendix D, respectively.

JURISDICTION

Respondents agree with Petitioner's statement of jurisdiction.

STATUTES INVOLVED

1. Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185.

STATEMENT OF THE CASE

This Petition seeks review of the Ninth Circuit's unpublished one-line order affirming the District Court's grant of summary judgment for Respondents. ("We AFFIRM the District Court's grant of summary judgment to appellees."). Petitioner's request for rehearing was denied by the Ninth Circuit panel deciding the appeal (Circuit Judges Pregerson, D.W. Nelson and Hawkins), and the full Ninth Circuit unanimously rejected Petitioner's suggestion for rehearing *en banc*.

In this action, Petitioner Teamsters Union Local 896 (the "Union" or "Petitioner") challenged the right of Respondent Anheuser-Busch, Incorporated ("Anheuser-Busch" or the "Company" or "Respondent") to conduct searches of employees' vehicles parked on Company premises. The action arises out of a search of the Company's "employee parking lot" which occurred on August 18, 1995 as part of Anheuser-Busch's efforts to maintain a drug free work place at its Los Angeles brewery.

On that occasion, Anheuser-Busch conducted a search of its own parking lot, for drugs contained in cars. This was done during regular working hours. The Company engaged an outside service, which utilized trained dogs to detect the smell of drugs in cars parked in the parking lot. In each instance when a canine detected the scent of drugs and the scent was confirmed by a second canine, the employee who owned the vehicle was asked to come to the parking lot, and was asked to sign a written consent to permit a search of the vehicle. Employees were advised that failure to cooperate with the search would result in discharge from employment.

The Union brought this action in Los Angeles County Superior Court, on behalf of its members employed at

Anheuser-Busch's Los Angeles Brewery (the "Union employees"). Those employees work for Anheuser-Busch pursuant to a collective bargaining agreement between the Company and the Union. Anheuser-Busch removed the action to federal Court, based on federal question jurisdiction and diversity of citizenship.

The District Court granted summary judgment for Anheuser-Busch on the grounds that each of the Union's claims was preempted by Section 301 of the Labor Management Relations Act. (Appendix D.) The Ninth Circuit affirmed.

REASONS FOR DENYING THE PETITION

The Ninth Circuit's short, unpublished order summarily affirming the summary judgment for Respondents is nonprecedential. Although the Union mischaracterizes both the facts giving rise to this dispute and the legal conclusions reached by the courts below, an examination of the findings of the lower courts clearly demonstrates that the judgment was perfectly consistent with and properly applied the controlling § 301 preemption principles established by this Court.

The Ninth Circuit's order is also consistent with the Ninth Circuit's prior decisions, as well as decisions from other circuits. There is no "confusion" in the lower courts or conflict between the circuits as to any question raised by this case, nor is there any question which is of such importance to warrant review by this Court.

In fact, the full Ninth Circuit unanimously rejected Petitioner's suggestion for a rehearing *en banc*.

A. The Ninth Circuit Order Is Non-precedential.

The Ninth Circuit's order summarily affirms the District Court's order granting Respondents' summary judgment. The order does not explain the basis for the ruling. (Appendix A) The order cannot be cited to or relied upon by other courts in the Ninth Circuit (Ninth Circuit Rule 36-3), much less by courts in other circuits. If the Section 301 issues raised by this case are as important and far reaching as Petitioner suggests, they deserve a full discussion and analysis by a court of appeals before consideration by this Court. There is no sound or compelling reason for this Court to use its sought after resources to rehash well-settled preemption rules based on the Ninth Circuit's one-line order.

B. The Petition Wildly Misrepresents The Facts Of The Dispute, And How The Law Was Applied By The Courts Below.

Rule 15.1 of this Court provides that "a brief in opposition to a petition for a writ of certiorari . . . should address any perceived misstatements of fact or law set forth in the petition." In the instant case, Petitioner has wildly misrepresented both the facts and the law.

1. The Union's Misrepresentations of Fact.

In its Petition, the Union asserts that this case involves employees who were "confined" in a "prison-like caged area . . . like so many holocaust victims." Petition

at 3. The Petition goes on to recite a story that is dramatically at odds with the evidentiary record, and the factual findings of the courts below.

The truth is reflected in the District Court's findings of fact.[1] Those findings make it clear that, contrary to the Union's assertions, no employee at Anheuser-Busch's plant was "confined" at all, much less "caged like a holocaust victim." Rather, the District Court expressly found, employees were free to leave the plant at any time, but were informed that they would be subject to termination from employment if they refused to cooperate with Anheuser-Busch's search.[2] The District

---

[1] The District Court granted summary judgment for Anheuser-Busch based on admissions taken from the deposition of the Union's designated representative. Despite the Union's contrary representations to this Court, the facts which supported summary judgment below were entirely undisputed.

[2] This finding was based on, among other things, the deposition of the Union's representative, who unequivocally testified that the only constraint placed on employees to require their cooperation with the drug search was the possibility of termination; *i.e.*, the fact that an employee who left the Brewery premises without consenting to a search upon request would be subject to termination of employment. The Union's representative testified:

> "Q. Other than the threat of termination for refusing to consent or violating plant rules, are you aware of any other threat or constraint that was placed on employees on that night?
>
> [Objection omitted.]
>
> A. To my knowledge, no, sir.
>
> Q. As you understand it, the only consequence that any employee was told they would suffer if they left the plant without signing the consent and passing through the turnstile was that they would lose their job?

(continued)

Court's findings of fact included the following:

> "5. Union employees at the Los Angeles Brewery clock in and out of the brewery by inserting an electronic badge to pass through a 'turnstile' between the brewery plant and the employee parking lot.
>
> 6. There is no physical obstruction which would prevent a person from leaving the brewery premises, or entering the employee parking lot, without passing through these turnstiles, but an employee is subject to discharge if he or she does leave in a way as to avoid these turnstiles. Guards are stationed in such a manner as to inform any employee attempting to avoid these turnstiles that they must go through the turnstiles or face termination.
>
> 7. The Union's claim of 'false imprisonment' is based on the fact that employees were threatened with

---

(fn. continued)

> That was the only consequence; correct?
>
> A. The only consequence that I was informed of, yes, sir.
>
> . . .
>
> Q. As you understand it, if an employee had chosen not to pass through the turnstiles but rather walk around the guard shack into the parking lot, get in their car and leave, they would have been terminated; correct?"
>
> A. Yes.

> termination if they left the brewery premises without consenting to a vehicle search, or without clocking out by passing through the turnstiles."

(Appendix D.)

Further, as the District Court expressly found, Anheuser-Busch's right to conduct such a search was governed by the collective bargaining agreement between Anheuser-Busch and the Union. The District Court found:

> "9. Under work rules adopted by Anheuser-Busch, any Union employee who leaves plant premises during working hours is subject to discipline up to and including discharge, for 'job abandonment.'
>
> 10. Anheuser-Busch has a history of conducting certain types of work place searches-searches which the Union has acknowledged are permissible under the collective bargaining agreement."

(Appendix D.)[3]

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[3] Five Anheuser-Busch employees who were disciplined for refusing to consent to a search, or because drugs or paraphernalia were found in their vehicles, filed grievances through Petitioner Union, or another union representing other groups of Anheuser-Busch employees. In all five cases, the unions asserted that Anheuser-Busch breached the collective bargaining agreement in conducting the search. In all five cases, the arbitrators concluded that the search was permitted by the collective bargaining agreements, including the agreement between Petitioner Union and Anheuser-Busch.

In its Petition, the Union asserts that the events giving rise to this

(continued)

2. The Union's Misrepresentations Of Law.

The Union suggests that the lower court "reasoned that any transaction between the Company and its employees is *ipso facto* covered by the Company's collective bargaining agreement with the Union, and therefore preempted . . ." Petition at 9. Thus, the Union argues, the lower court "require[d] employees covered by collective bargaining agreements to give up rights under state law which are **independent of such agreements.**" *Id.* (emphasis added).

The lower court, however, made no such finding. Rather, the District Court's Conclusions of Law (affirmed by the one sentence opinion of the Ninth Circuit) expressly found that the rights at issue were **not** independent of the collective bargaining agreement:

> "1. The claims of Plaintiff Union are preempted under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. **The Union's claims are inextricably intertwined with the collective bargaining agreement between the Union and Anheuser-**

(fn. continued)
dispute were "entirely independent" of the collective bargaining agreement, and that the agreement did not authorize the searches. The Union characterizes this as "the indisputable absence of any provision in the collective bargaining agreement even purporting [to apply to this dispute]." Describing this statement as "disingenuous" would be a grave disservice to this Court. The District Court, the Ninth Circuit, and five different arbitrators all concluded that Anheuser-Busch's collective bargaining agreements did regulate the Company's authority to conduct work place searches, and all five arbitrators concluded that the search was permissible under those agreements, including the Teamsters' agreement.

> **Busch, and require interpretation of that agreement for their resolution.** *Stikes v. Chevron USA, Inc.*, 914 F.2d 1265 (9th Cir. 1990), *cert. denied*, 500 U.S. 917 (1991); *Schlacter-Jones v. General Telephone*, 936 F.2d 435, 441 (9th Cir. 1991); *Laws v. Calmat*, 852 F.2d 430, 433 (9th Cir. 1988)."

(Appendix D.) (Emphasis added.)[4]

Thus, the lower courts did not find that the "mere existence" of a collective bargaining agreement preempted all state law, as the Union contends.[5] Rather, the lower courts found that the issues raised in this particular lawsuit, arising out of this particular work place search, were "inextricably intertwined with the collective bargaining agreement, and require[d] interpretation of that agreement for their resolution." *Id.* That is **exactly** the standard for determining preemption which has been repeatedly announced by this Court, as discussed below.

In short, a comparison of the Union's Petition with the lower courts' findings of fact and conclusions of law

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[4] Not only does the Union misrepresent the lower courts' conclusions of law, the Petition does not even **mention** the three cases expressly relied on by the District Court in reaching this conclusion of law.

[5] The Union purports to state the issue raised by its Petition as follows:

> "Was the lower court's finding that state law is completely preempted by **the mere existence** of a collective bargaining agreement, leaving individual union members without redress for violation of important state constitutional and statutory rights, erroneous?"

makes one thing very clear: This Petition does not seek resolution of an important legal issue, nor does it seek to resolve a conflict among the lower courts. Rather, this Petition asks the Supreme Court to re-review the specific factual findings made by the courts below in this specific case.

The fact that the Union finds it necessary to misrepresent the facts found below, and the law applied below, demonstrates that the Union is well aware that there is no valid reason to grant certiorari in this case. If certiorari were warranted in **this case**, it would be unnecessary for the Union to manufacture a **very different case**, with findings of fact and conclusions of law totally at odds with what was actually found by the courts below.

C. The Ninth Circuit's Order Is Consistent With This Court's Section 301 Cases.

The Ninth Circuit's order is entirely consistent with this Court's Section 301 preemption cases. This Court has repeatedly held that claims which depend on the interpretation of a collective bargaining agreement for their resolution are preempted by Section 301. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 394, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987). As this Court explained in *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 405-06, 411, 108 S.Ct. 1877, 100 L.Ed.2d 410 (1988):

> "[I]f the resolution of a state-law claim **depends upon the meaning of a collective-bargaining agreement**, the application of state law . . . is pre-empted and federal labor-law

> principles . . . must be employed to resolve the dispute.
>
> . . .
>
> [J]udges can determine questions of state law involving labor-management relations **only** if such questions do not require **construing** collective-bargaining agreements."

(emphasis added).

In considering whether a state law claim requires analysis of a collective bargaining agreement, and is therefore preempted, this Court has emphasized that it is necessary to consider both express and implied terms of the agreement. In *Consolidated Rail Corp. v. Railway Labor Executives' Ass'n.*, 491 U.S. 299, 109 S.Ct. 2477, 105 L.Ed.2d 250 (1989), this Court held that a dispute over a railroad's adoption of a drug testing program could only be resolved by interpretation of **implied terms** in the applicable collective bargaining agreement, based on the parties' past practice and the "law of the shop." The Court explained:

> "Neither party relies on any express provision of the agreement; indeed, the agreement is not part of the record before us. As the parties acknowledge, however, collective-bargaining agreements may include implied, as well as express, terms. Furthermore, it is well established that the parties' 'practice, usage and custom' is of significance in interpreting their agreement. This Court has observed: 'A collective bargaining agreement . . . calls into being a new common law —

> the common law of a particular industry or of a particular plant.' "

491 U.S. at 311-12 (citations omitted) (emphasis added).

This Court's established Section 301 analysis has not been changed by *Livadas v. Bradshaw*, 512 U.S. 107, 114 S.Ct. 2068, 129 L.Ed.2d 93 (1994). In fact, *Livadas* reaffirmed the Court's prior holdings that claims which depend on interpretation of the collective bargaining agreement for their resolution are preempted by Section 301. *Livadas* involved a claim which was **not** dependent on the collective bargaining agreement. *Livadas* dealt with a California statute which imposed a penalty on employers who failed to pay wages due to an employee immediately upon discharge. This Court held that union employees were entitled to recover this penalty, just as non-union employees are. The Court explained that enforcement of this state law right did **not** require interpretation of the collective bargaining agreement:

> "[T]he primary text for deciding whether Livadas was entitled to a penalty was not the Food Store Contract, but a calendar. The only issue raised by Livadas's claim, whether Safeway 'wilfully fail[ed] to pay' her wages promptly upon severance, Cal.Lab.Code Ann. § 203 (West 1989), was a question of state law, entirely independent of any understanding embodied in the collective-bargaining agreement between the union and the employer."

512 U.S. at 124-125.[6]

In the instant case, in contrast, the District Court expressly found, and the Ninth Circuit affirmed, that the Union's claims were:

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[6] Significantly, this Court noted that even a claim under Cal. Labor Code § 203 could be preempted by Section 301 where the collective bargaining agreement was at issue. *Livadas*, 512 U.S. at 125, n.19.

Similarly, in *Hawaiian Airlines v. Norris*, 512 U.S. 246, 114 S.Ct. 2239, 2245, 129 L.Ed.2d 203 (1994), this Court stressed the rule that any claim which requires interpretation of the collective bargaining agreement is preempted:

> "We have defined minor disputes as those involving the **interpretation** or application of existing labor agreements. *See, e.g., Consolidated Rail Corp. v. Railway Labor Exec. Assn.*, 491 U.S. 299, 305, 109 S.Ct. 2477, 2482, 105 L.Ed.2d 250 (1989) ('The distinguishing feature of [a minor dispute] is that the dispute may be conclusively resolved by **interpreting** the existing [CBA]'); *Pittsburgh & Lake Erie R. Co. v. Railway Labor Executives Assn.*, 491 U.S. 490, 501, n. 12, 109 S.Ct. 2584, 2592, 105 L.Ed.2d 415 (1989) ('Minor disputes are those involving the **interpretation** or application of existing contracts'); *Brotherhood of R.R. Trainmen*, 353 U.S., at 33, 33, 77 S.Ct., at 637 (minor disputes are 'controversies over the **meaning** of an existing collective bargaining agreement'); *Slocum v. Delaware, L. & W.R. Co.*, 339 U.S. 239, 243, 70 S.Ct. 577, 94 L.Ed. 795 (1950) (RLA arbitral mechanism is meant to provide remedies for 'adjustment of railroad-employee disputes growing out of the **interpretation** of existing agreements')."

512 U.S. at 256 (emphasis added).

> "inextricably intertwined with the collective bargaining agreement between the Union and Anheuser-Busch, and require[d] interpretation of that agreement for their resolution."

Although the Union's Petition first ignores and then misrepresents this finding, the fact remains that this case involves nothing more than a garden-variety application of well-established preemption principles — principles which this Court has repeatedly endorsed.

D. The Ninth Circuit's Order Is Consistent With Other Ninth Circuit Cases.

The Ninth Circuit's order affirming summary judgment for Respondents is also consistent with, and supported by, numerous other Ninth Circuit cases, holding state law privacy and related claims were preempted under nearly identical circumstances.

Stikes v. Chevron USA, Inc., 914 F.2d 1265 (9th Cir. 1990), *cert. denied*, 500 U.S. 917, 111 S.Ct. 2015, 114 L.Ed.2d 101 (1991) is directly on point. There, the plaintiff sued his employer in state court alleging, *inter alia*, that his employer violated his right to privacy under the California Constitution when it fired him for refusing to permit a search of his vehicle parked in the company parking lot. The employer removed the case to federal court under Section 301. The district court denied the plaintiff's motion to remand and granted summary judgment for the employer, holding that the plaintiff's claims were preempted by Section 301.

The Ninth Circuit affirmed, ruling:

> "Stikes' right to privacy claim is inextricably intertwined with the

> collective bargaining agreement. This is because a violation of California's constitutional right to privacy requires both that an individual have a 'personal and objectively reasonable expectation of privacy' and that the expectation 'has been infringed by an unreasonable . . . intrusion.' [Citations]. . . . Here, the district court could not ascertain Stikes' expectations of privacy at the workplace without considering the conditions of his employment enumerated in the collective bargaining agreement."

Id. at 1269.

Based on this finding of preemption, the Ninth Circuit upheld summary judgment for the employer:

> "Stikes' privacy claim was completely preempted by section 301 and properly dismissed on the merits."

Id. at 1270.

Similarly, in *Schlacter-Jones v. General Telephone*, 936 F.2d 435, 439 (9th Cir. 1991) (upholding summary judgment on a claim for invasion of privacy under California Constitution based on implementation of a drug and alcohol testing program), the Ninth Circuit explained that the preemption doctrine requires dismissal of such state law claims:

> "The district court reasoned that GTE's drug testing policy trumps state law claims for breach of implied contract and the covenant of good faith and fair dealing, as well as Schlacter-Jones's claims for

> intentional infliction of emotional distress and fraud, because these claims implicate the conditions of her employment and thus are 'substantially dependent' on the CBA for resolution. It also held that her state constitutional claims for violation of her rights to privacy and due process implicate the CBA . . . In so doing, the district court recognized that claims that implicate a collective bargaining agreement must be construed as a § 301 claim and adjudicated under federal labor law or be dismissed as preempted. *Allis-Chalmers*, 471 U.S. at 220, 105 S.Ct. at 1918-19; *Harris*, 897 F.2d at 402-03. . . . We agree that each of Schlacter-Jones's claims is preempted." [footnote omitted]

On numerous other occasions, the Ninth Circuit has reached the exact same conclusion. *See e.g., Utility Workers of America, Local No. 246 v. Southern California Edison Company*, 852 F.2d 1083, 1086 (9th Cir. 1988), *cert. denied*, 489 U.S. 1078, 109 S.Ct. 1530, 103 L.Ed.2d 835 (1989)("we find that Local 246's state-law claims cannot be resolved without reference to the collective bargaining agreement and that they should therefore be dismissed as preempted by section 301"); *Laws v. Calmat*, 852 F.2d 430, 433 (9th Cir. 1988) ("[W]e must hold that [the employee's] claim is also 'substantially dependant upon' the Calmat-Union CBA. [The employee's] conditions of employment are governed by the CBA. A drug and alcohol testing program, upon which all employees' continued employment

depends, is a working condition **whether or not it is specifically discussed in the CBA.**" (emphasis added)); *Utility Workers of America, Local No. 246 v. Southern California Edison, Co.*, 852 F.2d 1083, 1086 (9th Cir. 1988), *cert denied*, 489 U.S. 1078, 109 S.Ct. 1530, 103 L.Ed.2d 835 (1989) (state law privacy and wrongful termination claims arising out of employer's unilateral random drug testing program preempted by Section 301); *Scott v. Machinists Automotive Trades Dist. Lodge No. 190*, 827 F.2d 589, 594 (9th Cir. 1987) (defamation claim arising out of misconduct investigation preempted by Section 301).[7]

E. The Full Ninth Circuit Unanimously Rejected Petitioner's Suggestion For Rehearing *En Banc*.

Not only does the Ninth Circuit's order comport with its prior Section 301 decisions, the full Ninth Circuit unanimously rejected Petitioner's suggestion for a rehearing *en banc*. (Appendix B) The fact that not even one Circuit Judge voted to rehear this case *en banc* further demonstrates that the order is in the mainstream, and does not warrant further review by this Court.

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[7] While the Ninth Circuit has not considered when a false imprisonment claim may be preempted, it has repeatedly held claims which are merely "peripheral" to a preempted Privacy claim are also preempted. *Stikes*, 914 F.2d at 1270. *See Romero v. Hilton Hotels Corp.*, 137 L.R.R.M. (BNA) 2647, 2649-50 (D. Hawaii 1991) (assault, battery, false imprisonment, and infliction of emotional distress claims arising out of employer's theft investigation Preempted by Section 301).

F. The Ninth Circuit's Order Is Consistent With Decisions From Other Circuits.

Far from creating a conflict between the circuits, the Ninth Circuit's order is consistent with the great weight of authority from other circuits as well. *See, e.g., Sweigart v. Delmotte*, 148 L.R.R.M. (BNA) 2413, 2415-17 (E.D. Pa. 1994), *affirmed*, 74 F.3d 1228 (3d Cir. 1995) (Section 301 preempts state law violation of privacy claim resulting from employer's surveillance of employee bathroom); *Mock v. T.G. & Y. Stores Co.*, 971 F.2d 522, 529-30 (10th Cir. 1992) (state law claims for invasion of privacy, defamation, false imprisonment, intentional infliction of emotional distress, wrongful termination, and covenant of good faith and fair dealing arising from employer's interrogation of employees were preempted by Section 301); *In Re Amoco Petroleum Additives Co.*, 964 F.2d 706, 710 (7th Cir. 1992) (state law claims for invasion of privacy and infliction of emotional distress based on employer's use of surveillance cameras in employee locker room are preempted by Section 301); *Bagby v. General Motors Corp.*, 976 F.2d 919, 921-22 (5th Cir. 1992) (defamation and intentional infliction claims arising out of theft investigation preempted); *Jackson v. Liquid Carbonic Corporation*, 863 F.2d 111, 119 (1st Cir. 1988), *cert. denied*, 490 U.S. 1107, 109 S.Ct. 3158, 104 L.Ed.2d 1021 (1989) (state law invasion of privacy claim based on employee's termination for failing drug test preempted by Section 301); *Kirby v. Allegheny Beverage Corp.*, 811 F.2d 253, 256 (4th Cir. 1987) (invasion of privacy claim based on employer's request to search employee's person and vehicle preempted by Section 301); *Strachan v. Union Oil Co.*, 768 F.2d 703, 705-6 (5th Cir. 1985)

(defamation, false imprisonment, and false arrest claims arising out of drug investigation preempted by Section 301); *Blanchard v. Simpson Plainwell Paper Co.*, 925 F. Supp. 510 (W.D. Mich. 1995) (false imprisonment claim arising out of drug investigation preempted); *Kelly v. Mercoid Corporation*, 776 F. Supp. 1246, 1253-55 (N.D. Ill. 1991) (state law privacy claim based on employee's termination for refusing urinalysis test preempted by Section 301); *Majors v. U.S. Air, Inc.*, 525 F. Supp. 853, 857 (D. Md. 1981) (false imprisonment and defamation claims arising out of theft investigation preempted).

The Union argues that the circuit courts are "fractured" over how the preemption doctrine should be applied. The Union cites a number of cases which it characterizes as applying the doctrine "broadly" or "narrowly." This characterization, however, is self-serving and based purely on whether the Union agrees or disagrees with the results of the various courts' decisions. The controlling fact is that all of the cases cited by the Union apply the same standard — whether the dispute requires interpretation of a collective bargaining agreement. Consequently, although the Union argues with a particular court's conclusion as to whether a particular set of facts do or do not require interpretation of a collective bargaining agreement, the preemption principle is well understood and uniformly applied by each lower court.

Here, there is no possible question that resolution of the dispute did and does require interpretation of the collective bargaining agreement. "Privacy in the workplace ... is an ordinary subject of bargaining. The extent of privacy is a 'condition' of employment." *In Re Amoco Petroleum Additives Co.*, 964 F.2d 706, 710 (7th Cir. 1992). The Union does not cite a single case

holding that an employer's right to conduct searches of its own premises is not an appropriate subject for collective bargaining, or that a collectively bargained right to conduct such searches could possibly fail to preempt a state law challenge to the search.

Furthermore, as noted above, five different arbitrators have upheld Anheuser-Busch's right to conduct such searches under applicable collective bargaining agreements. See fn. 3, *supra*. For decades, this Court has endorsed the resolution of disputes such as this one through the collective bargaining and arbitration process. The Ninth Circuit summarized this Court's endorsement succinctly in *Utility Workers of America*, 852 F.2d at 1087-88:

> "Federal labor policy places great weight upon ensuring the availability of grievance procedures as 'a uniform and **exclusive method** for orderly settlement of employee grievances.' *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653, 85 S.Ct. 614, 617, 13 L.Ed.2d 580 (1965). 'Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties.' *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581, 80 S.Ct. 1347, 1352, 4 L.Ed.2d 1409 (1960). **'A rule that permitted an individual to sidestep available grievance procedures would cause arbitration to lose most**

> **of its effectiveness, . . . as well as eviscerate a central tenet of federal labor-contract law under § 301** that it is the arbitrator, not the court, who has the responsibility to interpret the labor contract in the first instance.' *Allis-Chalmers*, 471 U.S. at 220, 105 S.Ct. at 1916."

(Emphasis added.) Petitioner here does not seek resolution of an important or conflicted legal principle. Rather, Petitioner seeks the very "rule that permit[s] an individual to sidestep available grievance procedures," which this Court cautioned **against** in *Allis-Chalmers*. This Petition should be denied.

CONCLUSION

For all the foregoing reasons, the petition should be denied.

DATED: May 8, 1998.

Respectfully submitted,

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